IN THE

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1934**

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## No. 594

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THE FEDERAL LAND BANK OF ST. LOUIS,
A CORPORATION,

*Petitioner,*

*vs.*

A. B. PRIDDY, CIRCUIT JUDGE,

*Respondent.*

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## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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### Jurisdiction of This Court.

The juridiction of this Court is invoked under §237 of the Judicial Code (28 U. S. C. 344(b) ).

The Supreme Court of Arkansas has power to issue a writ of prohibition under Art. VII, §4 of the State Constitution.* The decision of that court denying a writ of prohibition is a final judgment reviewable here. (*Missouri v. Taylor*, 266 U. S. 200; *Bandini Petroleum Co. v. Superior Court of State of California*, 284 U. S. 8.)

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* Crawford & Moses Digest of the Statutes of Arkansas, 1921, p. 73.

Application for review by this Court is being made on December 22, 1934, within three months after entry of final judgment below. Although the Supreme Court of Arkansas rendered its decision on June 18, denying the petition for writ of prohibition, such decision did not become final until September 24, when that court denied the application for rehearing. (*Chicago Great Western R. Co.* v. *Basham*, 249 U. S. 164.)

**History of This Case.**

The respondent is a judge of the circuit court in and for Pope County, Arkansas. A resident of Pope County, one Briscoe, brought suit in that Court against this petitioner, for recovery of a sum alleged to be owing under a contract. A writ of attachment was issued by the Circuit Court, as prayed in the petition, and a summons, directed to the defendant, was served upon its tenant on the property.

In issuing the attachment above mentioned, the Circuit Court apparently proceeded under the provisions of §494, Crawford & Moses Digest of the Statutes of Arkansas, although no reference is made to this section in the decision of the Supreme Court. This section provides that:

> "the plaintiff in a civil action may, at or after the commencement thereof, have an attachement against the property of the defendant * * * in an action for the recovery of money * * * where the action is against a defendant * * * who is a foreign corporation or non-resident of the State * * *."

Following the attachment, constructive service of process was attempted to be made upon this petitioner under the following provisions of §§1159 and 1160 of Crawford & Moses Digest of the Statutes of Arkansas:

> §1159. Warning order. Where it appears by the affidavit of the plaintiff, filed in the clerk's office at or

after the commencement of the action * * * that the defendant is:

First. A foreign corporation, having no agent in this State; or

Second. A nonresident of this State * * * the clerk shall make and file with the papers in the case, an order warning such defendant to appear in the action within thirty days from the time of making the order * * *."

"§1160. Publication. The court may make the warning order upon the requisite facts being satisfactorily shown by affidavit or other proof. * * *"

The statutes of Arkansas further provide (C. & M. Dig. §1162) that

"a defendant against whom a warning order has been made and published shall, upon completion of the publication of the warning order for the four weeks required by law, be deemed to have been constructively summoned upon the date of the making of the order."

A warning order was issued by the Circuit Court in reliance upon the above quoted provisions, and jurisdiction was assumed over the case.

The present action arose upon petitioner's application to the Supreme Court of Arkansas for a writ of prohibition to enjoin further proceedings in the case then pending before the Circuit Court. A further statement of the history of this case will be found at pages 2 and 3 of the annexed petition.

## Assignments of Error.

1. The court erred in failing to hold that petitioner, being a Federal banking corporation and an instrumentality of the Federal government, is immune from interference in the performance of its functions by the attachment or garnishment of its property before final judgment.

2. The court erred in holding that §4 of the Federal Farm Loan Act (12 U. S. C. 676) constitutes a waiver of immunity from attachment or garnishment before judgment, in providing that Federal land banks may "sue and be sued * * * as fully as natural persons."

3. The court erred in holding that a Federal land bank is a "foreign corporation" in any state of its district.

**Immunity of Petitioner From Attachment Before Judgment.**

Petitioner is an instrumentality of the Government of the United States, and is immune from interference in the conduct of its business and the performance of its functions, through action like that attempted by the court below, in summarily impounding petitioner's property, before final judgment, by attachment, garnishment or otherwise. Petitioner relies upon the doctrine established by this Court in the case of *McCulloch* v. *Maryland*, 4 Wheat. 316, and reaffirmed in *Osborn* v. *United States Bank*, 9 Wheat. 738; *Farmers' and Mechanics' National Bank* v. *Dearing*, 91 U. S. 29, 33, 34; *Davis* v. *Elmira Savings Bank*, 161 U. S. 275, 283, 288, 290, and numerous other cases.

The decision below violates the rule stated by this Court in the case of *First National Bank* v. *California*, 202 U. S. 366, relative to the necessity of freedom on the part of a Federal banking corporation from attempted control of the conduct of its affairs on the part of a State.

Petitioner believes that interference in the conduct of its affairs by means of attachment or garnishment before judgment would be unlawful, even if attempted by a court of the United States. (*McCarthy* v. *U. S. Shipping Board Merchant Fleet Corporation*, 53 F. (2d) 923, cert. denied, 485 U. S. 547; *Moscow Hardware Co.* v. *Colson*, 158 F. 199; *Pringle* v. *Guild*, 118 F. 655.)

**Suits Against a Federal Land Bank.**

The Supreme Court of Arkansas erred in holding that Section 4 of the Federal Farm Loan Act (12 U. S. C. 676) constitutes a waiver of the immunity of a Federal land bank from attachment or garnishment before judgment. There is no indication of Congressional intention to waive such immunity, in the provision that a Federal land bank may "sue and be sued, complain, interplead and defend, in any court of law or equity, as fully as natural persons." An intention to waive a sovereign right must be unmistakably shown in the terms of an Act of Congress. (*Savings Bank* v. *United States*, 19 Wall. 239. See also *Moscow Hardware Co.* v. *Colson*, 158 F. 199, 201.)

Congress empowered the bank to sue, and granted a reciprocal privilege to the public. This grant is made in general terms, and must be construed in the light of all provisions of the Act. It does not purport to prescribe the process by which the bank or its adversary may be haled into court, or to define the privileges and immunities of either party. The conclusion reached by the Supreme Court of Arkansas on this point is similar to a ruling that the bank could obtain a judgment against an infant or a lunatic by bringing him into court without a guardian.

**Federal Corporations.**

The Supreme Court of Arkansas erred in holding that this petitioner is a "foreign corporation." Petitioner exists and operates by virtue of an act of the Congress of the United States, and is authorized by its charter to do business in several States, including the State of Arkansas. Petitioner is a national corporation, with no State citizenship (*Bankers' Trust Co.* v. *Texas and Pac. Ry.*, 241 U. S. 295).

A national corporation is not "foreign" to any State where it is permitted by law to do business. The Federal Farm Loan Act, under which this petitioner was created, is a law of Arkansas. This Court has held, in the case of *Claflin* v. *Houseman*, 93 U. S. 130, 136 that:

> "The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. The United States is not a foreign sovereignty as regards the several States, but is a concurrent, and, within its jurisdiction, paramount sovereignty."

This petitioner cannot be included within the statutory definition of a foreign corporation, which was relied on by the court below:

> "A 'foreign corporation' is one created by the laws of some other State or country." (C. & M. Dig. 9743.)
> "The words 'other country' signify any part of the world out of this State." (C. & M. Dig. 9744.)

Petitioner has been unable to discover any case where this Court has passed upon the applicability, to a national corporation, of State laws relative to foreign corporations. Petitioner invites the attention of the Court to a leading case on this subject, holding that a national corporation is not foreign to a State where it is permitted to do business, *Com.* v. *Texas & Pac. Ry. Co.*, 98 Pa. St. 90; to a case recently decided by the Circuit Court of Appeals for the Ninth Circuit, *Stewart* v. *Atl. National Bank of Boston*, 27 F. (2d) 222, 228; and also to the case of *Leggett* v. *The Federal Land Bank of Columbia*, 204 N. C. 541. Under the rule of these cases, petitioner is not a foreign corporation within the definition of that term as contained in the statutes of the State of Arkansas. Petitioner believes that it could not constitutionally be included within the provisions of State statutes relative to foreign corporations.

## Conclusion.

In conclusion, it is respectfully submitted that the questions of law raised by this case, arising under the Constitution and statutes of the United States, are of fundamental importance to this petitioner, to the other eleven Federal land banks, and to all corporate instrumentalities of the United States, and that the public interest will be served by a determination of these questions by this Court.

Respectfully submitted,

SCOTT W. HOVEY,
PEYTON R. EVANS,
MAY T. BIGELOW,
*Washington, D. C.,*
*Attorneys for Petitioner.*

G. V. HEAD,
J. R. CROCKER,
*St. Louis, Mo.,*
*Of Counsel for Petitioner.*

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